SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 292

MINNIE LERNER, PETITIONER,

vs.

FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE, WISCONSIN, JAKE RAKITA, HARRY BLUMENFELD, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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DISTRICT COURT OF THE UNITED STATES

Plac

For the Eastern District of Wisconsin.

United States of America,
Eastern District of Wisconsin. } ss:

At a stated term of the District Court of the United States of America, for the Eastern District of Wisconsin, begun and held at the City of Milwaukee, in said district, on the first Monday, (being the second day) of October, A. D. 1933, present the Honorable Ferdinand A. Geiger, District Judge, presiding:

Among other the following proceedings were had, to-wit:

In the Matter of
Minnie Lerner,
Bankrupt. } In Bankruptcy.

Be it remembered that heretofore, to-wit: on the 6th day of October, A. D. 1933, came the bankrupt and filed her petition for discharge in bankruptcy as follows:

d Oct. 6, 33. 2 Oct. 6, 1933—BANKRUPT'S PETITION FOR DISCHARGE, filed as follows:

IN THE DISTRICT COURT OF THE UNITED STATES,

For the Eastern District of Wisconsin.

In the Matter of
Minnie Lerner,
Bankrupt. } In Bankruptcy.

To the Honorable, Ferdinand A. Geiger, Judge of the District Court of the United States for the Eastern District of Wisconsin:

Minnie Lerner, of the City of Milwaukee, in the County of Milwaukee, and State of Wisconsin, in said District, respectfully represents that on the 22nd day of May last past she duly adjudged bankrupt under the acts of Congress relating to bankruptcy; that she duly surrendered all her property and rights of property, and she fully complied with all the requirements of said acts and of the orders of the Court touching her bankruptcy.

Wherefore, she prays that she may be decreed by the Court to have a full discharge from all debts provable against her estate under said bankrupt acts, except such debts as are excepted by law from such discharge.

Dated, this 4th day of October, 1933.

MINNIE LERNER,
Bankrupt.

Endorsed: "Filed Oct. 6, 1933. B. H. Westfahl, Clerk."

d Oct. 11, 33. 3 Oct. 11, 1933—REFEREE'S NOTICE TO CREDITORS, filed as follows:

• • (Caption) • •

Notice Is Hereby Given, that the above named bankrupt has filed her petition for discharge; that the same will be heard before said Court at Milwaukee, in said District on November 18th, 1933, at ten o'clock in the forenoon, and that

all creditors may appear at said time and place and show cause why the same should not be granted.

Dated, Milwaukee, Wisconsin, this 10th day of October, 1933.

F. C. WESTFAHL, JR.,
Referee in Bankruptcy.

Endorsed: "Filed Oct. 11, 1933. B. H. Westfahl, Clerk."

4 Nov. 17, 1933—Appearance of First Wisconsin National Bank of Milwaukee, in opposition to discharge, filed as follows: Fi

• • (Caption) • •

APPEARANCE IN OPPOSITION TO DISCHARGE.

Now comes the First Wisconsin National Bank of Milwaukee, a creditor of the above named bankrupt, by John C. Warner, a member of the firm of Wood, Warner & Tyrrell, its Attorney in fact and duly authorized agent, and appears in opposition to the said bankrupt's discharge and requests leave of the Court that its time for filing specifications of grounds of opposition to said discharge be extended to November 28, 1933.

FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE,
By: JOHN C. WARNER (Sgd.)
Its Attorney.

Endorsed: "Filed Nov. 17, 1933. B. H. Westfahl, Clerk."

5 Nov. 18, 1933—APPEARANCE OF JAKE RAKITA ET AL. IN OPPOSITION TO DISCHARGE OF BANKRUPT, filed as follows: Filed 193

• • (Caption) • •

November 18 ,A. D. 1933.

Before the Honorable F. A. Geiger, Judge.

This day came Jake Rakita et al, creditors in the above entitled matter by their counsel Mr. Ben Z. Glass and in open

Court entered their appearance to oppose the discharge of the above named bankrupt.

Endorsed: "Filed Nov. 18, 1933. B. H. Westfahl, Clerk."

Nov. 28. 6 Nov. 28, 1933—Order granting objecting creditors time to file specifications of objections.

Specifications of Objections by Jake Rakita, Sarah Rakita, Harry Blemenfeld and Dora Blemenfeld, filed as follows:

* * (Caption) * *

SPECIFICATIONS OF GROUNDS OF OPPOSITION TO DISCHARGE.

At Milwaukee, in Milwaukee County and State of Wisconsin, on November 28th, 1933, came Jake Rakita, of said City and County and State, and made oath and said:

That he is a creditor of Minnie Lerner, Bankrupt above named, interest in the estate of the said Minnie Lerner, Bankrupt, and does hereby oppose the granting to the said Minnie Lerner of a discharge from her debts and for the grounds of such opposition does file the following specifications hereinafter set forth.

Specifications.

1. The claim of said affiant arises out of a mortgage dated June 4, 1929 and executed by Minnie Lerner and Mayr Lerner, her husband, to Jake Rakita and Sarah Rakita and Harry Blumenfeld and Dora Blumenfeld, upon which said mortgage there was due and owing on or about October 16, 1932, the principal sum of $3650.00.

That on or about Oct. 17, 1932, an action was commended in the Circuit Court of Milwaukee County by this deponent and his co-owners of said note, against the said Minnie Lerner and Mayr Lerner, her husband, to recover the amount then due upon said note.

That on or about December 17, 1932, the Hon. John C. Kleczka, a Circuit Judge in and for Milwaukee County, ordered said action advanced for trial and placed upon the jury day calendar.

That said action was reached for trial on February 7, 1933

and was tried before the court and a jury, and the judgment was ordered entered for the amount due on said note in favor of this deponent and his co-owners of said note and
7 against Minnie Lerner and Mayr Lerner, bankrupts, on February 9, 1933. That judgment upon said order was entered on February 13, 1933.

That execution was issued on February 13, 1933, and was thereafter returned by the sheriff in and for Milwaukee County, unsatisfied.

That on May 8th, 1933, this deponent and the co-owners of said judgment filed in the office of the Clerk of this court a petition seeking to obtain an order of this court adjudicating the said Minnie Lerner and Mayr Lerner, bankrupts, under and pursuant to the bankruptcy act of the United States.

That for the grounds of this opposition, this deponent on behalf of himself and the co-owners of said judgment, being authorized so to do, makes and files the following specifications in opposition to the discharge of the said Minnie Lerner, bankrupt, from his debts, in that said bankrupt has transferred, removed, and concealed certain of her property with the specific intent to hinder, delay or defraud her creditors in the following manner:

1. On or about November 17th, 1932, the bankrupt and Mayr Lerner, her husband, caused to be filed with the department of state in and for the State of Wisconsin, at Madison, Wisconsin, articles of organization of the Lerner Realty Company and also caused said articles to be filed with the Register of Deeds of Milwaukee County, Wisconsin.

2. That on November 18th, 1932, said defendant transferred by warranty deed to the corporation known as the Lerner Realty Company, formed at her instance, certain real estate, being all of the real estate then owned by her either in her own name or in survivorship with her husband, Mayr Lerner,
8 and that said real is described as follows:

Lot numbered 3 and all that part of Lot numbered 2 which lies south of Harmon Street, all in Block 24, in Lynde & Vliet's Addition in the N. W. ¼ of Section 20 in Township 7 North, of Range 22 East, in the City of Milwaukee, together with the buildings and improvements thereon.

Lot 15 in Block 4 in Harrison Park, and Lot 2 in Block 8 in Vernon Heights, being in the North West ¼ of Section 14 in Township 7 North, of Range 21 East, in the City of Milwaukee.

Lot 5 Block 3 in Graham & Osborn's Subdivision, being the re-subdivision of Lots 15 to 21 inclusive, in plot of the re-sub-

division of Lots 2 to 8 inclusive, in E. C. Freihube's Subdivision in the S.W. ¼ of Section 6 in Township 7 North, of Range No. 22 East, in the 20th Ward of the City of Milwaukee.

Lot 1, the East 10 feet of Lot 2 and the East 30 feet of Lot 20, in Block 1 in Kennich Heights, in the N.E. ¼ of Section 3, Township 6 North, of Range 21 East, in the first Ward of the City of West Allis, also including all trade fixtures such as pumps, tanks and all other articles used in connection with the filling station, excepting only air pump and boiler belonging to tenant.

That part of Lot 13, Block 4 in Connells Subdivision bounded and described as follows: Commencing at the southwesterly corner of Lot 13, thence North 40′ West along the East line of Lot 13, 82.88 feet to a point, thence West and parallel to the North line of Lot 13, 2 feet, to a point, thence South and parallel to the East line of Lot 13, 81.72 feet to a point in the northerly line of Atkinson Avenue, thence Southeasterly along the northerly line of Atkinson Avenue, 2.30 feet to the place of beginning, being the East 2 feet of the South 82.88 feet of Lot 13 and Lot 14, Block 4, Connell's Subdivision and that part of Lot 14, Block 4 Connell's Subdivision bounded and described as follows: Commencing at the Southwesterly corner of Lot 15, thence North along the West line of Lot 15, 109.14 feet to a point in the North line of Lot 15, thence East along the North line of Lot 15, 7.50 feet to a point, thence South and parallel to the West line of Lot 15, 113.33 feet to a point in the Northerly line of Atkinson Avenue, thence Northerly along said northerly line of Atkinson Avenue 863 feet to the place of beginning, being the West 7.50 feet of Lot 15, being a part of the Northeast ¼ of Section 7, in Township 7 North, of Range 22 East in the 25th Ward of the City of Milwaukee.

Lot 2 in Block 12 in the Continuation of Harrison Park being a subdivision of part of the N.E. ¼ of Section 14 in Township 7 North of Range 21 East in the 20th Ward of the City of Milwaukee.

Lot 7 in Block 11 in Harrison Park being a subdivision of a part of the N.E. ¼ of Section 14 in Township 7 North, of Range 21 East, in the 20th Ward of the City of Milwaukee, now in the 26th Ward of the City of Milwaukee.

3. That as deponent is informed and verily believes said bankrupt received for the transfer of said real estate, a certificate for 170 shares of the stock of said corporation with the view of placing the equities he held in these properties beyond

the reach of his creditors and with the specific intent of
9 protecting his equities and income from said real estate from the suits of hostile creditors and from the judgment liens of this deponent.

4. That on or about November 18th, 1932, as this deponent is informed and verily believes, said bankrupt caused to be issued by said Lerner Realty Company, to her daughter Sophie Steigman, 30 shares of the capital stock of said company without consideration.

5. That on or about November 18th, 1932, said bankrupt was one of the owners of the following described real estate, to wit:

The South Eleven feet (S. 11') of Lot Two (2), all of Lot Three (3), Block Twenty-four (24), Lynde's & Vliet's Subdivision in the City and County of Milwaukee, Wisconsin, commonly known as 1929-1931 N. 12th Street.

and on November 18th, 1932 said bankrupt conveyed said property to Lerner Realty Company. On November 30, 1932 said Lerner Realty Company conveyed, without consideration, said property to Mayr Lerner and Minnie Lerner, his wife. That on January 31, 1933 said bankrupt and her husband, Mayr Lerner, with intent to hinder, delay, or defraud the creditors of said bankrupt, transferred, removed and concealed said property by making a pretended mortgage upon said property on that date for the sum of Three Thousand Dollars ($3,000.00) to her sons Julius Lerner and Joseph P. Lerner, said mortgage having been given to said mortgagees without lawful consideration. Said property is income-producing, having aggregate monthly rentals at the present time of One Hundred Fifty-five Dollars ($155.00) per month. That with the intent to hinder delay or defraud her creditors said bankrupt, without consideration, on or about January 31, 1933, assigned, transferred and set over to her sons Julius Lerner and Joseph P. Lerner, all the rentals then due or which might thereafter become due and owing from all the tenants of said premises to Mayr Lerner.

10 This objecting creditor is informed and believes that one Isadore Blankstein is a relative of a child of said bankrupt and that said Isadore Blankstein is the sole owner of Isadore Blankstein Company. That on or about November 18, 1932 said bankrupt was the owner of the following three parcels of real estate located in Milwaukee County, Wisconsin, to-wit:

a. Lot 15 (15), Block Four (4), Harrison Park, and Lot Two (2), Block Eight (8), Vernon Heights.

b. Lot Five (5), Block Three (3), Graham & Osborn's subdivision.

c. Lot One (1) and E. Ten feet (10′) of Lot Two (2) and E. Thirty Feet (30′) of Lot Twenty (20), Block One (1), Kenneth Heights.

On that date said bankrupt conveyed said real estate to Lerner Realty Company. On or about March 15th, 1933, said bankrupt caused said Lerner Realty Company to execute and deliver a pretended mortgage for $3400.00 to Isadore Blankstein Company upon said real estate, without consideration. That said mortgage was caused to be made with the specific intent to hinder, delay or defraud the creditors of said bankrupt.

That on or about June 4, 1929, Mayr Lerner and Minnie Lerner, purchased the following described property.

Lots 16 and 17, Block 3, in Hanson & Milbrath's Subdivision No. 1 in the S.W. ¼ of Section 10, 6, 22, in Milwaukee County, Wisconsin.

That on or about August 19, 1931, Mayr Lerner and Minnie Lerner, his wife, deeded this property to her children, who gave Minnie Lerner, and Mayr Lerner, her husband, a mortgage for the sum of $4500.00. On or about November 3, 1933 said Minnie Lerner and Mayr Lerner, her husband, with intent to hinder, delay and defraud the creditors of said bankrupt, released said mortgage to the mortgagee thereof, this objecting creditor is informed and believes, for the sum of $1500.00.

That on or about February 20, or 21st, 1933, and after judgment was entered on the claim of this deponent as hereinbefore set forth, said bankrupt delivered to the First Wis-
11 consin National Bank of Milwaukee, a banking corporation, the certificate for 170 shares of stock of the Lerner Realty Company, as and for collateral for debts then due and owing by her to the said bank, without any new consideration and without assigning said certificate in writing. That the said delivery of said certificate of stock to said bank was made with the specific intent to hinder, delay or defraud this deponent and other creditors.

(Sgd) JAKE RAKITA.

Subscribed, acknowledged and sworn to before me the day and year above mentioned, said subscriber being known to me to be the person described in and who signed and swore to above instrument.

BEN Z. GLASS.
Notary Public, Milwaukee County, Wisconsin.

My Commission expires 1/7/34.

Leave is hereby granted to file the foregoing specifications of objections to discharge of the bankrupt.

(Sgd) F. A. GEIGER,
U. S. District Judge.

Endorsed: "Filed Nov. 28, 1933. B. H. Westfahl, Clerk."

12 Nov. 28, 1933—Specifications of objections of First Wisconsin National Bank, filed as follows: Filed Nov. 1933.

• • (Caption) • •

SPECIFICATIONS OF GROUNDS OF OPPOSITION TO DISCHARGE.

At Milwaukee, in the County of Milwaukee, and State of Wisconsin, on the 28th day of November, A. D. 1933, came A. G. CASPER, of said City, County and State aforesaid, and made oath and said:

That he is Cashier of First Wisconsin National Bank of Milwaukee, a national banking association, duly organized and existing and authorized to do business under and by virtue of the Acts of Congress of the United States, and hereinafter designated as objecting creditor.

That said creditor is doing business as 743 N. Water Street, Milwaukee, Wisconsin.

That affiant is that officer of said creditor whose duties most nearly correspond to those of Treasurer.

That affiant is duly authorized to make these specifications and does hereby oppose the granting to said bankrupt of a discharge from his debts, and for the grounds of this opposition does file the following specifications:

I.

That on or about November 18, 1932 Mayr Lerner, the husband of the bankrupt herein, was the sole owner of property described as 1929-1931 N. 12th Street, Milwaukee, Milwaukee County, Wisconsin. That on November 18, 1932 said Mayr Lerner conveyed said property to Lerner Realty Company. That on November 30, 1932 said Lerner Realty Company conveyed the said property to Mayr Lerner and Minnie Ler-
13 ner, his wife. That said bankrupt at a time subsequent to the first day of the twelfth month immediately preceding

the filing of the petition in bankruptcy herein, to-wit: on January 31, 1933, with intent to hinder, delay or defraud her creditors, transferred, removed and concealed, and permitted to be removed and concealed, certain of her property, to-wit:

The South Eleven Feet (S. 11′) of Lot Two (2), all of Lot Three (3), Block Twenty-four (24), Lynde's & Vliet's Subdivision in the City and County of Milwaukee, Wisconsin, commonly known as 1929-1931 N. 12th Street,

in that she did make, with her husband, Mayr Lerner, a pretended mortgage for Three Thousand Dollars ($3000.00) upon said real estate to her sons, Julius Lerner and Joseph P. Lerner, without consideration. That said property is income-producing, having aggregate monthly rentals at the present time of One Hundred Fifty-five Dollars ($155.00) per month. That with the intent to hinder, delay or defraud her creditors, said bankrupt, without consideration, on or about January 31, 1933 assigned, transferred and set over to her sons, Julius Lerner and Joseph P. Lerner, all the rentals then due or which might thereafter become due and owing from all the tenants of said property to Minnie Lerner.

II.

That on or about November 18, 1932 said bankrupt, Minnie Lerner, owned jointly with her husband the following described parcels of real estate:

1720 W. Atkinson Avenue, more particularly described as the East Two and Twenty-five hundredths feet (E. 2.25′) of the South Eighty-two and Eighty-eight hundredths feet (S. 82.88′) on East line of Lot Thirteen (13), all of Lot Fourteen (14) and the West Seven and Fifty hundredths (W. 7.50) feet of Lot Fifteen (15), Block Four (4), Connell's Subdivision, Milwaukee County, Wisconsin,

and on that date, with specific intent to hinder, delay or defraud her creditors, she transferred with her husband and removed or concealed all the above described real estate to a corporation known as Lerner Realty Company, formed at her instance, in return for One hundred seventy (170) shares of
the capital stock of said corporation, with the view of
14 placing the equities she held in this property beyond the
reach of her creditors, and with the specific intent of protecting her equity therein from the suit of hostile creditors. That on the same day said Minnie Lerner joined with her

husband in the transfer of certain other real estate to Lerner Realty Company with the specific intent to hinder, delay or defraud her creditors.

III.

That on or about June 4, 1929 Mayr Lerner and Minnie Lerner, his wife, purchased the following described property: Lots Sixteen (16) and Seventeen (17), Block Three (3) in Hanson & Milbrath's Subdivision No. 1 in the Southwest one-quarter (S.W. ¼) of Section Ten (10), Six (6), Twenty-two (22) in Milwaukee County, Wisconsin,
and that on or about August 19, 1931 Mayr Lerner and Minnie Lerner, his wife, deeded this property to her children, who gave Mayr Lerner and Minnie Lerner, his wife, a mortgage for the sum of Forty-five Hundred Dollars ($4500.00). That on or about November 3, 1932 said Mayr Lerner and Minnie Lerner, his wife, with intent to hinder, delay and defraud her creditors, released said mortgage to the mortgagees thereof, this objecting creditor is informed and believes, for the sum of Fifteen Hundred Dollars ($1500.00).

(Sgd) A. G. Casper,
Cashier of First Wisconsin National Bank of Milwaukee.

Subscribed, acknowledged and sworn to before me the day and year above mentioned, said subscriber being known to me to be the person described in and who signed and swore to above instrument.

S. M. Koller,
(Seal) *Notary Public, Milwaukee County, Wisconsin.*

My commission expires 9-23-1934.

Endorsed: "Filed Nov. 28, 1933, B. H. Westfahl, Clerk."

15 Dec. 15, 1933—BANKRUPT'S NOTICE OF MOTION TO STRIKE SPECIFICATIONS, filed as follows: Filed Dec. 1933.

• • (Caption) • •

Please Take Notice that Minnie Lerner, the bankrupt above named, will appear on the 16th day of December, 1933, at the opening of court, or as soon thereafter as counsel can be

heard, before the Honorable Ferdinand A. Geiger, Judge of the District Court of the United States for the Eastern District of Wisconsin, and will move to strike the specifications of objections filed in the above entitled matter for the reason that the same were not filed within the time limited by General Order No. 32 as amended by the Supreme Court of the United States on the 17th day of April, 1933, effective April 24, 1933.

Dated, this 13th day of December, 1933.

HERSH & MORSE,
Attorneys for Bankrupt, Minnie Lerner.

To Ben Z. Glass, Attorney for Jake Rakita and Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld.

To Wood, Warner & Tyrrell, Attorneys for First Wisconsin National Bank.

Endorsed: "Filed Dec. 15, 1933, B. H. Westfahl, Clerk."

16 And afterwards, to-wit: on the sixty-third day of said Term, to-wit: on the 16th day of December, 1933, the following proceedings were had, to-wit:

* * (Caption) * *

December 16, A. D. 1933.

Before Hon. F. A. Geiger, Judge.

This day came the parties by their counsel, Mr. Emil Hersh appearing for the bankrupt, and Messrs. Wood, Warner & Tyrrell and Ben Z. Glass appearing for creditors objecting to the discharge of the bankrupt. And this matter came on to be heard upon motion of said bankrupt to strike specifications of objections of the said objecting creditors; was argued and submitted, on consideration thereof,

It Is Ordered by the Court that said motion be and the same hereby is denied.

Endorsed: "Filed Dec. 16, 1933, B. H. Westfahl, Clerk."

17 Jan. 5, 1934—PRAECIPE, filed as follows: Filed Jan. 1934.

* * (Caption) * *

To: B. H. Westfahl, Clerk of the United States District Court for the Eastern District of Wisconsin.

Sir:

Please prepare and transmit to the United States Circuit Court of Appeals for the 7th Circuit the transcript of record and proceedings in the above entitled cause for use on appeal heretofore allowed herein and include in said transcript the following:

Bankrupt's petition for discharge.

Notice to Creditors.

Appearance in opposition to discharge in bankruptcy by First Wisconsin National Bank.

Appearance in opposition to discharge in bankruptcy by Jake Rakita and Sarah Rakita and Harry Blumenfeld and Dora Blumenfeld.

Order of United States District Court of November 28, 1933 granting objecting creditors time to file specifications of objections.

Specifications of Objections by First Wisconsin National Bank of Milwaukee, Wisconsin.

Specifications of Objections by Jake Rakita and Sarah Rakita and Harry Blumenfeld and Dora Blumenfeld.

Bankrupt's motion, notice of motion to dismiss specifications.

Order of United States District Court of December 16th, 1933, denying motion to strike specifications.

Praecipe.

Clerk's Certificate.

HERSH & MORSE,
Attorneys for Minnie Lerner, Bankrupt.

Endorsed: "Filed Jan. 5, 1934. B. H. Westfahl, Clerk."

18 CERTIFICATE OF CLERK.

United States of America
Eastern District of Wisconsin } ss.

I, B. H. Westfahl, Clerk of the District Court of the United States of America for the Eastern District of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, which are copies, with their originals now on file and remaining of record in my office, and that they are true copies of the petition of the bankrupt to be discharged, order of December 16, 1933, denying motion of bankrupt to strike specifications of objections to the discharge of the bankrupt, and other papers and proceedings in the matter of Minnie Lerner, bankrupt.

In Testimony Whereof, I have hereunto set my hand, and duly affixed the seal of said Court at the City of Milwaukee, in said District, this 18th day of January in the year of Our Lord, one thousand nine hundred thirty-four, and of the Independence of the United States, the 158th.

B. H. WESTFAHL,
(Seal) *Clerk.*

Proceedings had and papers filed in the U. S. Circuit Court of Appeals:

19 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Minnie Lerner,
Bankrupt.

To the Honorable, the Judges of the Circuit Court of Appeals, for the Seventh Circuit of the United States:

Your petitioner, Minnie Lerner, respectfully represents that she is a resident of the City and County of Milwaukee, State of Wisconsin and was heretofore duly adjudicated bankrupt by the District Court of the United States for the Eastern District of Wisconsin, on the 22nd day of May, 1933; that thereafter, and on the 6th day of October, 1933, petitioner made application to the United States District Court for the Eastern District of Wisconsin, for a discharge in bankruptcy;

and that pursuant thereto, and on the 10th day of October, 1933, notice was given to all of the creditors of the above named bankrupt, that petitioner had filed her petition for discharge and that said notice further provided that the same would be heard before the United States District Court for the Eastern District of Wisconsin, at Milwaukee, in said district, on the 18th day of November, 1933 at 10 o'clock in the forenoon, and that all creditors could appear at said time and place and show cause why the same should not be granted; that thereafter, and on the 18th day of November, 1933, the First Wisconsin National Bank of Milwaukee, Wisconsin, and Jack Rakita and Sarah Rakita, his wife and Harry Blu-
20 menfeld and Dora Blumenfeld, his wife, by their respective attorneys, appeared before said court on the 18th day of November, 1933 and entered formal objection to the discharge in bankruptcy of your petitioner, and at the same time the court granted said objecting creditors ten days time in which to file their specifications; that thereafter, and on the 28th day of November, 1933, the said First Wisconsin National Bank, at Milwaukee, Wisconsin, and the said Jack Rakita and Sarah Rakita, his wife, and Harry Blumenfeld and Dora Blumenfeld, his wife, filed specifications of objections; that thereafter, and on the 13th day of December, 1933, petitioner, by her attorneys, caused to be served upon the attorneys for the objecting creditors, a Notice that petitioner would appear before the District Court for the Eastern District of Wisconsin, on the 16th day of December, 1933, and move to strike the specifications of objections filed in the above matter, for the reason that the same were not filed within the time limited by General Order XXXII as amended by the United States Supreme Court on the 17th day of April, 1933, effective on April 24, 1933; and that thereafter, and on the 16th day of December, 1933, your petitioner appeared by her attorneys at a hearing before the said District Court, and the said court, denying the motion of petitioner, caused an order to be entered denying said dismissal of said specifications, said order being entered on the 16th day of December, 1933.

That this petitioner, feeling herself aggrieved by the order of the United States District Court, for the Eastern District of Wisconsin, as entered on the 16th day of December, 1933, for the reason specified in the assignment of errors which is filed herewith, prays that her appeal be allowed and that citation issue as provided by law, and that a transcript of the

records, proceedings and papers upon which said order and decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Seventh Circuit, under rules of such court in such cases made and provided.

21 Petitioner further prays that the proper order touching the security to be required of her to perfect her appeal, be made.

Dated at Milwaukee, Wisconsin, this 28th day of December, 1933.

MINNIE LERNER,
Petitioner.

State of Wisconsin }
Milwaukee County } ss.

MINNIE LERNER, being first duly sworn, according to law, deposes and says that she is the petitioner in the foregoing petition; that this appeal is not intended for delay, but that she verily believes that injustice has been done.

MINNIE LERNER.

Subscribed and sworn to before me this 28th day of December, 1933.

EMIL HERSH,
Notary Public, Milwaukee County, Wisconsin.

22 Endorsed: In the United States Circuit Court of Appeals For the Seventh Circuit. In the Matter of Minnie Lerner, Bankrupt. Petition for Appeal. Filed Jan. 4, 1934. Frederick G. Campbell, Clerk. Hersh & Morse Attorneys at Law 325-327 Century Building 808 North 3rd Street Milwaukee, Wis.

Jan. 4, 34.

23 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Minnie Lerner,
Bankrupt.

Now comes Minnie Lerner, the bankrupt in the above entitled matter and states that there is manifest error in the proceedings in this case, upon the application for discharge in

bankruptcy by petitioner and in the order entered by the United States District Court for the Eastern District of Wisconsin, herein, on the 16th day of December, 1933, and assigns as errors on appeal, that:

1. The United States District Court for the Eastern District of Wisconsin erred in granting the ten days time beyond the day creditors were required to show cause, in opposition to the petition for discharge within which objecting creditors could file specifications of objections.

2. The United States District Court for the Eastern District of Wisconsin, erred in not granting the bankrupt's motion to strike the specifications of objections filed by the objecting creditors for failure to file the same on the return day.

3. The United States District Court for the Eastern District of Wisconsin, erred in not following General Order XXXII of the bankruptcy act, as amended, effective on April 24, 1933 (11 U. S. C. A. Sec. 53).

24 Wherefore, petitioner prays that the aforesaid order, entered by the United States District Court for the Eastern District of Wisconsin, on December 16th, 1933, denying the bankrupt's petition to strike the specifications filed by the objecting creditors be reversed and that the said District Court for the Eastern District of Wisconsin, be directed to vacate said order entered on the 16th day of December, 1933, and be required and directed to enter an order striking the specifications of objections and that the petition for discharge be granted to petitioner.

Dated, at Milwaukee, Wisconsin, this 28th day of December, 1933.

MINNIE LERNER,
Petitioner.

25 Endorsed: In the United States Circuit Court of Appeals For the Seventh Circuit. In the Matter of Minnie Lerner, Bankrupt. Assignment of Errors. Filed Jan. 4, 1934. Frederick G. Campbell, Clerk. Hersh & Morse Attorneys at Law 325-327 Century Building 808 North 3rd Street Milwaukee, Wis.

Filed Jan. 4, 1934. 26 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Thursday, January 4, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.

In the Matter of Minnie Lerner, Bankrupt.

Minnie Lerner
5128 *vs.*
First Wisconsin National Bank of Milwaukee, Wis., *et al.*

Appeal from the District Court of the United States for the Eastern District of Wisconsin.

On motion of Minnie Lerner, Bankrupt, in the above entitled matter,

It Is Hereby Ordered, that an appeal to the United States Circuit Court of Appeals, for the Seventh Circuit, from the order heretofore entered by the District Court of the United States for the Eastern District of Wisconsin, on the 16th day of December, 1933, denying the Bankrupt's motion to strike the specifications of objections filed by the First Wisconsin National Bank, at Milwaukee, Wisconsin, Jack Rakita and Sarah Rakita, his wife, and Harry Blumenfeld and Dora Blumenfeld, his wife, the objecting creditors, be and the same is hereby allowed, and that a transcript of the record, proceedings, and documents had therein duly authenticated, be forthwith transmitted to the United States Circuit Court of Appeals, for the Seventh Circuit.

It is further ordered, that the bond on appeal be fixed in the sum of $250.00.

27 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Minnie Lerner,
Bankrupt.

To: First Wisconsin National Bank, of Milwaukee, Wisconsin, Jake Rakita and Sarah Rakita, his wife and Harry Blumenfeld and Dora Blumenfeld, his wife.

You Are Hereby Notified that in that certain matter in the United States District Court in and for the Eastern District of Wisconsin, in the matter of Minnie Lerner, Bankrupt, wherein the District Court denied the Bankrupt's motion to strike specifications of objections to her discharge in bankruptcy, filed by the First Wisconsin National Bank, Jake Rakita and Sarah Rakita, his wife, and Harry Blumenfeld and Dora Blumenfeld, his wife, an appeal has been allowed to the said Minnie Lerner, Bankrupt, to the United States Circuit Court of Appeals for the Seventh Circuit.

You Are Hereby Cited and Admonished to be and appear at the United States Circuit Court of Appeals for the Seventh Circuit to be holden at the City of Chicago, thirty days after the date of the citation, to-wit, on the 3rd day of February, 1934, and to show cause, if any there be, why the order entered therein and appealed from as in the order allowing said appeal set forth, should not be corrected and speedy justice done the parties in their behalf.

Witnesseth, the Hon. William M. Sparks, Judge of the United States Circuit Court of Appeals for the Seventh Circuit, this 4th day of January, 1934.

WILLIAM M. SPARKS,
Judge Circuit Court of Appeals.

28 Endorsed: 5128 In the United States Circuit Court of Appeals For the Seventh Circuit. In the Matter of Minnie Lerner, Bankrupt. Citation. Filed Jan. 6, 1934. Frederick G. Campbell, Clerk. Hersh & Morse Attorneys at Law 325-327 Century Building 808 North 3rd Street Milwaukee, Wis. Received Copy Jan. 5, 1933, Wood, Warner & Tyrrell, Attorneys for First Wisconsin National Bank of Milwaukee, Wis. Received Copy January 5, 1934, Ben Z. Glass, Per L. Neururer, Atty. for Jake Rakita, Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 19, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the fifth day of February, 1934, and used and considered at the hearing and on the determination of the following entitled cause:

In the Matter of Minnie Lerner, Bankrupt;

Minnie Lerner,

Appellant,

vs.

First Wisconsin National Bank of Milwaukee, Wisconsin, Jake Rakita, Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld,

Appellees,

No. 5128, October Term, 1933, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 27th day of June, A. D. 1934.

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Seal)

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room in the City of Chicago, in said Seventh Circuit on the third day of October, 1933, of the October Term in the year of our Lord One Thousand Nine Hundred and Thirty-Three and of our Independence the One Hundred and Fifty-Eighth.

In the Matter of Minnie Lerner, Bankrupt;

Minnie Lerner
5128 *vs.*
First Wisconsin National Bank of Milwaukee, *et al.*

Appeal from the District Court of the United States for the Eastern District of Wisconsin.

And on, to-wit: On the fourth day of January, 1934, there was filed in the office of the Clerk of this court a Petition for Leave to Appeal, which said Petition for Leave to Appeal is not copied here, as the same appears on pages 14 to 16, inclusive, of the printed record in this cause, certified herewith.

And on the same day, to-wit: On the fourth day of January, 1934, there was filed in the office of the Clerk of this court an Assignment of Errors, which said Assignment of Errors is not copied here, as the same appears on pages 16 and 17 of the printed record in this cause, certified herewith.

And on the same day, to-wit: On the fourth day of January, 1934, there was filed in the office of the Clerk of this court an order allowing appeal was entered, which said order allowing appeal is not copied here, as the same appears on page 18 of the printed record in this cause, certified herewith.

And on the same day, to-wit: On the fourth day of January, 1934, there was filed in the office of the Clerk of this court an appearance of counsel for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5128. October Term, 1933.

In the Matter of Minnie Lerner, Bankrupt;

Minnie Lerner,

Appellant,

vs.

First Wisconsin National Bank of Milwaukee, *et al.*,

Appellees.

The Clerk will enter my appearance as counsel for the appellant.

EMIL HERSH and HERBERT MORSE,
327 Century Building,
Milwaukee, Wis.

Endorsed: Filed January 4, 1934, Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the sixth day of January, 1934, there was filed in the office of the Clerk of this court a Citation, which said Citation is not copied here, as the same appears on page 19 of the printed record in this cause, certified herewith.

And afterwards, to-wit: On the ninth day of January, 1934, there was filed in the office of the Clerk of this court the Bond on Appeal, which said Bond on Appeal is not copied here, as it is set out in full in the order approving bond, immediately following.

And on the same day, to-wit: On the ninth day of January, 1934, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 9, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Samuel Alschuler, Circuit Judge.

In the Matter of Minnie Lerner, Bankrupt.

Minnie Lerner
5128 *vs.*
First Wisconsin National Bank of Milwaukee, *et al.*

Appeal from the District Court of the United States for the Eastern District of Wisconsin.

Now this day comes the appellant and presents her appeal bond, pursuant to the order of this court entered January 4, 1934, which said appeal bond is in the words and figures following, to-wit:

Know All Men By These Presents, that Minnie Lerner, as principal, and The Aetna Casualty and Surety Company, as surety, are held and firmly bound unto the First Wisconsin National Bank, of Milwaukee, Wisconsin, Jake Rakita and Sarah Rakita, his wife, and Harry Blumenfeld and Dora Blumenfeld, his wife, in the full and just sum of Two Hundred and Fifty and no/100 ($250.00) Dollars, to be paid to the said First Wisconsin National Bank, Jake Rakita and Sarah Rakita and Harry Blumenfeld and Dora Blumenfeld, and to which payment, well and truly made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents, sealed with our seals and dated this 5th day of January, 1934.

Whereas, at a regular term of the District Court of the United States for the Eastern District of Wisconsin, sitting at Milwaukee in said district, in the matter of Minnie Lerner, Bankrupt, wherein the said Minnie Lerner filed a motion to strike specifications of objections filed by the First Wisconsin National Bank of Milwaukee, Wisconsin, Jake Rakita and Sarah Rakita, his wife and Harry Blumenfeld and Dora Blumenfeld, his wife, to the petition for discharge in bank-

ruptcy and an order was entered on the 16th day of December, 1933, dismissing the motion to strike said specifications, and the said Minnie Lerner has taken an appeal from said order to the United States Circuit Court of Appeals in such case to reverse the order of the court in said matter and a citation having been issued herein directed to the First Wisconsin National Bank, of Milwaukee, Wisconsin, Jack Rakita and Sarah Rakita, his wife, and Harry Blumenfeld and Dora Blumenfeld, his wife, citing that they be and appear before the United States Circuit Court of Appeals for the Seventh Circuit to be holden at the City of Chicago, in the State of Illinois, according to law, within thirty days from the date of such citation.

Now, Therefore, the condition of such obligation is such that if the said Minnie Lerner shall prosecute her appeal to effect and answer all damages and costs, if she shall fail to make her plea good, then the above obligation to be void; otherwise to remain in full force and effect.

Dated at Milwaukee, Wisconsin, this 5th day of January, 1934.

MINNIE LERNER,
Principal.

THE AETNA CASUALTY AND SURETY COMPANY (SEAL)
By: A. J. GODDARD,
Surety,
Attorney-in-fact.

Countersigned
C. D. SULLIVAN,
Resident Agent.

The above bond is approved both as to form and sufficiency and in all other respects, this 9th day of January, 1934.

SAMUEL ALSCHULER,
Judge Circuit Court of Appeals.

It is now here ordered that the foregoing bond be, and the same is hereby approved.

And afterwards, to-wit: On the twenty-second day of January, 1934, there was filed in the office of the Clerk of this court an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5128. October Term, 1933.

In the Matter of Minnie Lerner, Bankrupt;

Minnie Lerner,

Appellant,

vs.

First Wisconsin National Bank of Wisconsin, *et al.*,

Appellees.

The Clerk will enter my appearance as counsel for the appellee.

JOHN C. WARNER,
213 West Wisconsin Ave.,
Milwaukee, Wisconsin.

Endorsed: Filed January 22, 1934, Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the third day of February, 1934, there was filed in the office of the Clerk of this court an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5128. October Term, 1933.

In the Matter of Minnie Lerner, Bankrupt;

Minnie Lerner

vs.

First Wisconsin National Bank of Milwaukee, *et al.*

The Clerk will enter my appearance as counsel for the appellee.

BEN Z. GLASS,
152 W. Wisconsin Ave.,
Milwaukee, Wisconsin.

Endorsed: Filed February 3, 1934, Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the ninth day of February, 1934, there was filed in the office of the Clerk of this court a notice and motion to dismiss appeal, which said notice and motion are in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Minnie Lerner,
Bankrupt. } Case #5128

NOTICE OF MOTION TO DISMISS APPEAL.

To: Hersh & Morse,
Counsel for Appellant.

Please Take Notice that upon the pleadings, papers and proceedings in this cause in the District Court of the United States for the Eastern District of Wisconsin, and upon the record and proceedings returned to this court by the Clerk of

the said District Court on the appeal by the bankrupt to this court, the First Wisconsin National Bank of Milwaukee, one of the Appellees in the above cause will move this court at the courtroom in the Federal Building in the City of Chicago, State of Illinois, for an order dismissing the appeal in the above entitled cause upon the grounds more fully set forth in said motion to dismiss, a copy of which motion is hereto annexed and herewith served upon you, and for such other relief as to the court may seem fit and proper.

Such motion will be submitted to the United States Circuit Court of Appeals for the Seventh Circuit on Tuesday, February 13, 1934, at 9:30 o'clock A. M.

Dated February 8, 1934.

JOHN C. WARNER,
Counsel for First Wisconsin National Bank of Milwaukee, one of the Appellees.

Due service of the within Notice and Motion is hereby admitted this ..... day of February, 1934.

.....
Counsel for Appellant.

Received Feb. 8, 1934.

HERSH & MORSE,
Attorneys for Minnie Lerner, Bankrupt.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Minnie Lerner,
Bankrupt. } Case #5128

MOTION TO DISMISS APPEAL.

Comes now the First Wisconsin National Bank of Milwaukee, one of the Appellees herein, by John C. Warner, its Counsel, and moves this court to dismiss with costs the appeal taken herein to this court by Minnie Lerner, Bankrupt, upon the following grounds:

1. The appeal is premature.
2. The order appealed from is not final, and is an order preceding a final decision.

3. The Appellate Court has no jurisdiction as an appellate court to hear and determine said appeal.

Dated February 8, 1934.

JOHN C. WARNER,
Counsel for First Wisconsin National Bank of Milwaukee, one of the Appellees.

Endorsed: Filed Feb. 9, 1934, Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the thirteenth day of February, 1934, there was filed in the office of the Clerk of this court a notice and motion to dismiss appeal, and affidavit of Ben Z. Glass, which said notice, motion to dismiss appeal and affidavit, are in the words in figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Minnie Lerner,
Bankrupt. } Case #5128

NOTICE OF MOTION TO DISMISS APPEAL.

To: Hersh & Morse,
Counsel for Appellant.

Please Take Notice that upon the pleadings, papers and proceedings in this cause in the District Court of the United States for the Eastern District of Wisconsin, and upon the records and proceedings returned to this court by the Clerk of the said District Court on the appeal by the bankrupt to this court, and upon the affidavit of Ben Z. Glass, counsel for several appellees, Jake Rakita, Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld, several of the Appellees in the above cause will move this court at the courtroom in the Federal Building in the City of Chicago, State of Illinois, for an order dismissing the appeal in the above entitled cause upon the grounds more fully set forth in said motion to dismiss, a copy of which motion and affidavit is hereto annexed and herewith served upon you, and for such other relief as to the court may seem fit and proper.

Such motion will be submitted to the United States Circuit Court of Appeals for the Seventh Circuit on Tuesday, February 13, 1934, at 9:30 o'clock A. M.

Dated February 8, 1934.

BEN Z. GLASS,
Counsel for Jake Rakita, Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld.

Due service of the within notice, motion and affidavit is hereby admitted this ..... day of February, 1934.

.....
Counsel for Appellant.

Received Feb. 8, 1934.

HERSH & MORSE,
Attorneys for Appellant.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Minnie Lerner,
Bankrupt. } Case #5128

MOTION TO DISMISS APPEAL.

Come now Jake Rakita, Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld, several of the Appellees herein, by Ben Z. Glass, their Counsel, and move this court to dismiss with costs the appeal taken herein to this court by Minnie Lerner, Bankrupt, upon the following grounds:

1. The appeal is premature.
2. The order appealed from is not final, and is an order preceding a final decision.
3. The Appellate Court has no jurisdiction as an appellate court to hear and determine said appeal.

Dated February 8, 1934.

BEN Z. GLASS,
Counsel for Jake Rakita, Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld, several of the Appellees.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Minnie Lerner,
Bankrupt. } Case #5128

AFFIDAVIT.

State of Wisconsin
Milwaukee County } ss.

BEN Z. GLASS, being first duly sworn, on oath deposes and says:

1. That he is the attorney for Appellees Jake Rakita, Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld in the above entitled matter.

2. That on November 18, 1933 a hearing on the petition for discharge of the above named bankrupt came on to be heard before the District Court of the United States for the Eastern District of Wisconsin.

3. That the bankrupt did not appear at said hearing and no one appeared on behalf of said bankrupt at said hearing.

4. That the court thereupon, on verbal motion of Ben Z. Glass, entered an order granting objecting creditors ten days' time to file specifications of objections to the discharge of said bankrupt.

5. That on November 28, 1933, specifications of objections to the discharge of said bankrupt were duly filed by Jake Rakita, Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld within the time limited by said order.

BEN Z. GLASS.

Subscribed and sworn to before me this 8th day of February, 1934.

LUCILLE C. NEURURER,
(Notarial Seal) *Notary Public, Milwaukee Co., Wis.*

My commission expires Jan. 31, 1937.

Endorsed: Filed Feb. 13, 1934, Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the thirteenth day of February, 1934, the following further proceedings were had and entered of record, to-wit:

Tuesday, February 13, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.

In the Matter of Minnie Lerner, Bankrupt;

Minnie Lerner
5128 *vs.*
First Wisconsin National Bank of Milwaukee, Wisconsin, *et al.*

Appeal from the District Court of the United States for the Eastern District of Wisconsin.

Now this day come the parties by their counsel and counsel for appellee present a motion to dismiss this appeal, and the court having heard the oral argument by Mr. John C. Warner, counsel for appellee, in support of said motion, and by Mr. Emil Hersh, counsel for appellant, in opposition thereto, It is ordered that counsel for appellee file a typewritten brief on the question of the right of the District Court to extend time for filing specifications within 5 days from this date; and that counsel for appellant file a typewritten reply thereto within 5 days after the filing of the brief for appellee.

And afterwards, to-wit: On the eighth day of May, 1934, there was filed in the office of the Clerk of this court the opinion of the court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5128. October Term, 1933, April Session, 1934.

IN THE MATTER OF MINNIE LERNER, Bankrupt.

MINNIE LERNER, *Appellant,*

vs.

FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE, WISCONSIN, JAKE RAKITA, SARAH RAKITA, HARRY BLUMENFELD and DORA BLUMENFELD, *Appellees.*

Appeal from the District Court of the United States for the Eastern District of Wisconsin.

May 8, 1934.

Before EVANS and SPARKS, *Circuit Judges.*

Per Curiam. Minnie Lerner was adjudged a bankrupt on the 22nd day of May, 1933, and on the 6th day of October, 1933, made application for a discharge of debts. On October 10, 1933, notice was given to creditors that the petition for discharge had been filed and would be heard by the District Court on November 18, 1933. On the latter date, appellees appeared by counsel and entered formal objections and requested leave of court, which was granted, for an extension of time to November 28, 1933, within which to file specification of objections. No objections were interposed by bankrupt to the order extending the time. The creditors filed specifications of objections on November 28, 1933, and bankrupt moved to strike them because they were not filed in time. The court denied bankrupt's motion. This court granted appellant leave to appeal pursuant to section 24-B of the Bankruptcy Act.

General Order No. 32 before the 1933 amendment read as follows:

"A creditor opposing the application of a bankrupt for

his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be shortened or enlarged by special order of the judge."

On April 17, 1933, this order, No. 32, was amended, and now reads:

"A creditor opposing an application for discharge, or for the confirmation of a composition or extension proposal, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall at the same time file a specification in writing of the grounds of his opposition."

Appellant contends the amended order was intended to, and does, deny to the court the right to extend the time for filing of specifications of objections.

Prior to the amendment it was quite generally held that the court could enlarge the time for the filing of specifications.* These holdings are predicated on the assumption that the objections and specifications are pleadings, and the time within which they may be filed are matters within the discretion of the District Court. Unless the amended order takes from the court all power to allow amendments to pleadings or denies to it the right to grant extensions of time within which to file such pleadings, the contention of appellant can not be sustained. Two cases have been cited by appellant which hold that the amended order No. 32 has this effect. (*Matter of Harley M. Hodges,* 4 F. Supp. 804; *Matter of Cornelius J. Corcoran,* 4 F. Supp. 988.)

We are not persuaded that the amended order was intended to so restrict or limit the court who is, of necessity, in the best possible position to determine whether extensions of time should be granted or whether pleadings should be amended.

The order does fix the time within which objections shall be filed. Specifications are merely elaborations of the objections. The order does not, however, prescribe procedure in case objections are made within the designated time.

Objections, we take it, may be made orally in open court.

* *In re Rerat,* 14 F. (2d) 607; *Schlesinger* v. *Phillips,* 36 F. (2d) 191; *In re Nathanson,* 152 Fed. 585; *In re Brecher,* 4 F. (2d) 1001.

Having been thus made, they should be reduced to writing and filed on the same day, that is, the return day. They must likewise be accompanied by or followed by specifications. Nevertheless, when good cause is shown, why should the specifications not be filed at a later date? In the instant case, the bankrupt's counsel and objectors' attorney were both in court on the return day. The latter made their objections and asked for a short time within which to file the specifications. Bankrupt's counsel did not object. The specifications were filed on the date fixed by the order of the court, and the bankrupt's attorneys moved to strike them. Had bankrupt's counsel objected on the return day, attorneys for creditors could and would have filed their objections on that same day. To permit bankrupt to take advantage of an order entered on her apparent acquiescence would be intolerable.

The court of bankruptcy is a court of equity. The Bankruptcy Act is administered by such a court. Statutes, rules, and decisions alike, require, of necessity, short periods of time within which parties may file pleadings and take appeals. There is good reason back of the rules which expedite matters in bankruptcies, for otherwise delays would defeat the most effective administration of the bankrupt estate. The requirement for the filing of objections promptly is a salutary one, and should not be defeated by inexcusable action of one litigant. But it is unfair to assume that a court confronted by a request for time within which to file specifications of objections would violate the spirit of the act which stresses promptness in disposing of matters arising in the administration of the act. We can not believe that the order was intended to take away from the District Court all discretion in matters that are primarily those of pleading. Nor was it intended to permit one to acquiesce in request of counsel, and action of court thereon, to repudiate the necessary consequences of such acquiescence.

The order is

AFFIRMED.

And on the same day, to-wit: On the eighth day of May, 1934, the following further proceedings were had and entered of record, to-wit:

Tuesday, May 8, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.

In the Matter of Minnie Lerner, Bankrupt;

Minnie Lerner
5128 *vs.*
First Wisconsin National Bank of Milwaukee, Wisconsin, Jake Rakita, Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld.

Appeal from the District Court of the United States for the Eastern District of Wisconsin.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Wisconsin, and was argued by counsel.

On consideration whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

And afterwards, to-wit: On the twenty-eighth day of May, 1934, there was filed in the office of the Clerk of this court a petition for rehearing, which said petition for rehearing is not copied here.

And afterwards, to-wit: On the seventh day of June, 1934, there were filed in the office of the Clerk of this court two answers to the petition for rehearing, which said answers to the petition for rehearing are not copied here.

And afterwards, to-wit: On the nineteenth day of June, 1934, the following further proceedings were had and entered of record, to-wit:

Tuesday, June 19, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.

In the Matter of Minnie Lerner, Bankrupt;

Minnie Lerner
5128 *vs.*
First Wisconsin National Bank of Milwaukee, Wisconsin, Jake Rakita, Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld

Appeal from the District Court of the United States for the Eastern District of Wisconsin.

It is ordered by the court that the petition for rehearing in this cause be, and the same is hereby denied.

And on the same day, to-wit: On the nineteenth day of June, 1934, the following further proceedings were had and entered of record, to-wit:

Before:

Hon. Evan A. Evans, Circuit Judge.

On motion of counsel for appellant, it is now here ordered that the mandate in this cause be, and the same is hereby stayed for 90 days.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 23 to 38, inclusive, contain a true copy of the proceedings had and papers filed (excepting briefs of counsel, petition for rehearing and answers thereto),

In the Matter of Minnie Lerner, Bankrupt;

Minnie Lerner,

Appellant,

vs.

First Wisconsin National Bank of Milwaukee, Wisconsin, Jake Rakita, Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld,

Appellees,

No. 5128, October Term, 1933, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 27th day of June, A. D. 1934.

(Seal)

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[fol. 40] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.